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**IN THE SUPREME COURT OF IOWA**

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**16-1794**

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**IN RE THE MARRIAGE OF LYNN MARIE LARSEN and ROGER  
WAYNE LARSEN**

**Upon the Petition of,  
LYNN MARIE LARSEN,  
Petitioner-Appellee,**

**And concerning,**

**ROGER WAYNE LARSEN,  
Respondent-Appellant.**

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**APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR STORY COUNTY  
HONORABLE MICHAEL J. MOON, JUDGE**

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**RESPONDENT-APPELLANT'S BRIEF, ARGUMENT,  
AND REQUEST FOR ORAL ARGUMENT**

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**Erin M. Carr  
Carr & Wright, P.L.C.  
300 Walnut Street, Suite 140  
Des Moines, Iowa 50309**

**(515) 875-4868**

**ATTORNEY FOR RESPONDENT/  
APPELLANT**

**Nicole Facio  
Newbrough Law Firm, LLP  
612 Kellogg Avenue, Box 847  
Ames, IA 50010-0847**

**(515) 232-1761**

**ATTORNEY FOR PETITIONER/  
APPELLEE**

**PROOF OF SERVICE AND CERTIFICATE OF FILING**

I certify that on April 5, 2017, I will file this document by submitting the document via electronic filing with the Clerk of the Supreme Court. The following participants in the case who are registered with the EDMS will be served by EDMS.

Nicole Facio  
Attorney for Appellee

/s/ Erin M. Carr

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Proof of Service and Certificate of Filing .....	i
Table of Authorities.....	iii
Statement of the Issues Presented for Review .....	1
Statement of the Case .....	3
Argument.....	16
Subdivision I.....	16
Subdivision II. ....	19
Subdivision III.....	23
Conclusion.....	24
Attorney's Cost Certificate .....	24
Certificate of Compliance.....	25

**TABLE OF AUTHORITIES****CASES**

<i>In re Marriage of Fynaardt</i> , 545 N.W.2d 890, 892 (Iowa App. 1996). ....	16,20
<i>In re Marriage of Goodman</i> , 690 N.W.2d 279 (Iowa 2004) ....	11,13,14,16,17,18,19
<i>In re Marriage of Okonkwo</i> , 525 N.W.2d 870, 872 (Iowa Ct. App. 1994) .....	16,19
<i>In re Marriage of Sullins</i> , 715 N.W.2d 242, 247 (Iowa 2006) .....	16,19
<i>In re Marriage of Vannausdle</i> , 668 N.W.2d 885, 889 (Iowa 2003).....	12, 17, 20, 21
<i>In re Marriage of Williams</i> , 595 N.W.2d 126 (Iowa 1999).....	16

**STATUTES**

Iowa Code § 598.21F .....	10,12,13, 14,15,16,17,20,21,22
Iowa R. App. P. 6.1101. ....	15
Iowa R. App. P. 6.103. ....	3



## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

### **I. THE DISTRICT COURT ERRED IN ITS CALCULATION OF THE COST OF ATTENDANCE**

#### **Cases**

*In re Marriage of Okonkwo*, 525 N.W.2d 870 (Iowa Ct. App. 1994)

*In re Marriage of Sullins*, 715 N.W.2d 247 (Iowa 2006)

*In re Marriage of Fynaardt*, 545 N.W.2d 890 (Iowa App. 1996)

*In re Marriage of Goodman*, 690 N.W.2d 279 (Iowa 2004)

*In re Marriage of Williams*, 595 N.W.2d 126 (Iowa 1999)

*In re Marriage of Vannausdle*, 668 N.W.2d 885, 889 (Iowa 2003)

#### **Statutes**

Iowa Code §598.21F

### **II. THE DISTRICT COURT ERRORED IN NOT ASSESSING COST TO THE CHILD**

#### **Cases**

*In re Marriage of Okonkwo*, 525 N.W.2d 870 (Iowa Ct. App. 1994)

*In re Marriage of Sullins*, 715 N.W.2d 247 (Iowa 2006)

*In re Marriage of Fynaardt*, 545 N.W.2d 890 (Iowa App. 1996)

*In re Marriage of Vannausdle*, 668 N.W.2d 885, 889 (Iowa 2003)

*In re Marriage of Goodman*, 690 N.W.2d 279 (Iowa 2004)

**Statutes**

Iowa Code §598.21F

**III. TOTAL CALCULATION OF SUBSIDY**

## STATEMENT OF THE CASE

**Nature of the Case:** This is an appeal as a matter of right by the Respondent-Appellant, Roger Wayne Larsen (hereinafter “Roger”). Said appeal is from the entry of judgment and Order issued by the Honorable Michael J. Moon following hearings before the Iowa District Court for Story County on August 22, 2016 and September 26, 2016. The Order, filed on October 5, 2016, is a final judgment under the Iowa Rules of Appellate Procedure. Iowa R. App. P. 6.103. Roger appeals the following ruling made by the district court as it relates to the calculation and assessment of post-secondary education expenses for the parties’ child.

**Course of Proceedings and Disposition of the Case in District Court:** This matter was initiated by the Petitioner-Appellee, Lynn Marie Larsen (hereinafter “Lynn”), by the filing of and Application for Hearing to Determine Post Secondary Education Subsidy on August 2, 2016. (Application) (App. pp. 18-20). The matter proceeded to hearing on August 22, 2016. (Order) (App. pp. 37-79). On September 13, 2016, the district court issued a ruling in this matter assessing post-secondary education expenses to the parties. (Order) (App. pp. 104-107). Following the ruling, both parties filed Motions to Amend, enlarge, and modify the Order. (Motion to Enlarge – Petitioner) (Motion to Enlarge – Respondent) (App. pp. 108-114). On September 26, 2016, a hearing was held on the Motions.

(Motion Tr., p. 1, lines 1-25) (App. pp. 115-130). On October 5, 2016, the district court entered an Order assessing post-secondary education expenses to the parties. (Amended Order) (App. pp. 131-135). The district court determined that Roger should pay \$6,629.73 towards the post-secondary education expenses of the child at issue. (Amended Order) (App. pp. 131-135).

Roger filed a Notice of Appeal on October 19, 2016, as to the Order assessing post-secondary education expenses and all adverse rulings contained therein. (Notice of Appeal) (App. pp. 136-137).

### **STATEMENT OF THE FACTS**

Lynn (Petitioner) and Roger (Respondent) were married in the State of Iowa on November 11, 1995. (Petition) (App. pp.1-3). They have three children that were born of this marriage, H.M.L. (XX/XX/1997), J.N.L. (XX/XX/2001), and C.A.L. (XX/XX/1994). (Petition) (App. pp. 1-3). Both parties worked outside the home during the marriage and the parties accumulated a substantial amount of net worth throughout the life of the marriage. Their original dissolution matter came before the district court on April 29, and 30, of 2015. (Decree of Dissolution) (App. pp. 12-17). On April 29, the parties reached a last-minute agreement on child custody, and spent the remainder of April 29 negotiating a number of other issues. (Decree of Dissolution) (App. pp. 12-17). The issues on which the parties agreed are outlined in the Partial Stipulation for Decree, which was filed on April 30,



2015, and adopted by the district court on August 11, 2015. (Partial Stipulation) (Decree of Dissolution) (App. pp. 4- 17). The rest of the issues were heard on April 30, 2015, and focused primarily on the property and debt division of the parties. (Decree of Dissolution) (App. pp. 12-17). The district court issued a Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage on August 11, 2015, ruling on the contested issues of the parties. (Decree) (App. pp. 12-17). The Decree and Partial Stipulation in this matter contains a provision regarding post-secondary education expenses for the parties' children. (Decree of Dissolution) (App. pp. 12-17). It states as follows:

**Post-Secondary Education Subsidy.** In the event any child pursues a course of study or training beyond high school under the circumstances contemplated by Iowa Code section 598.21F, each of the parties shall contribute toward the costs of that study or training as provided for by section 598.21F(c). The parties' custodial 529 accounts for each child shall first be used to discharge their share of their contributions under this provision but neither party shall be able to avoid contribution based upon any claims of alienation or estrangement. These accounts shall be equally divided with each party having an account for each child.

(Decree of Dissolution) (App. pp. 12-17).

Petitioner initiated this action on August 2, 2016, by filing an Application for Hearing to Determine Post-Secondary Education Subsidy. (Application) (App. pp. 18-20). In her Application, Petitioner alleged that their oldest child, H.L., had enrolled at Iowa State University and was scheduled to start school on August 22, 2016. (Application) (App. pp. 18-20). She further alleged that H.L. was not



receiving enough financial assistance to cover the costs of her education and requested the district court assess post-secondary education expenses to the parties to make up for the financial deficiency. (Application) (App. pp. 18-20). The matter was set for hearing on August 22, 2016. Prior to the hearing, the parties exchanged documents regarding H.L.'s college financial assistance package. (Hearing Tr., p. 4, line 18 – p. 5, line 23) (App. pp. 40-41). However, documents regarding H.L.'s earnings over the past year were not available to the parties prior to the commencement of the hearing. (Hearing Tr., p. 4, line 18 – p. 5, line 23) (App. pp. 40-41).

At the hearing, Petitioner testified that H.L. was enrolled at Iowa State University in the college of design. (Hearing Tr., p. 10, line 20 – p. 11, line 7) (App. pp. 26-47). She further testified that H.L. had received an offer of employment with the university for five hours a week at minimum wage. (Hearing Tr., p. 10, line 20 – p. 11, line 7) (App. pp. 46-47). Petitioner indicated that H.L. had pledged to a sorority and that the sorority dues and costs were included in the request for post-secondary education expenses. (Hearing Tr., p. 11, line 17 – p. 12, line 22) (App. p. 47-48). Petitioner indicated that H.L. intended to live in the dorms for her first year of college but that she may move into the sorority house for her subsequent years. (Hearing Tr., p. 11, line 17 – p. 12, line 22) (App. pp. 47-48). Petitioner testified that H.L. had been awarded scholarship money in the

amount of \$5,000.00 per year and she was eligible for student loans. (Hearing Tr., p. 13, lines 9-15) (App. p. 49). Ultimately, Petitioner requested the district court to assess the costs of attendance to each party on a one-third basis. (Hearing Tr., p. 13, lines 1-8) (App. p. 49).

On cross-examination, Petitioner acknowledged that the costs contained in the cost of attendance sheet were not the same as H.L.'s actual costs of attendance. (Hearing Tr., p. 16, line 7 – p. 20, line 10) (App. pp. 52-56). Through examination, she compared and contrasted Exhibit B, which was the cost of attendance estimate for a student at Iowa State University, with Exhibit A, which was H.L.'s actual University (Ubill) from Iowa State University. (Hearing Tr., p. 16, line 7 – p. 20, line 10) (Exhibits A and B) (App. pp. 21-24; 52-56). Although Petitioner was asking for the district court to compute the cost of attendance based on the estimate contained in Exhibit B, she acknowledged that, in several respects, the actual costs to H.L. as shown by Exhibit A were lower than the estimated costs. (Hearing Tr., p. 16, line 7 – p. 20, line 10) (Exhibits A and B) (App. pp. 21-24; 52-56). Additionally, the Petitioner was questioned regarding H.L.'s eligibility for Federal Student Loans. (Hearing Tr., p. 20, line 13 – p. 21, line 19) (Exhibit B) (App. pp. 23-24; 49-57). Petitioner stated that H.L. was eligible for a \$5,500.00 unsubsidized Federal Student Loan as shown in Exhibits B and C. (Hearing Tr., p. 20, line 13 – p. 21, line 19) (Exhibits B and C) (App. pp. 23-29; 56-57). However,

pursuant to the Petitioner's advice, H.L. did not apply for this loan. (Hearing Tr., p. 20, line 13 – p. 21, line 19) (Exhibits B and C) (App. pp. 23-29; 56-57).

Respondent testified at the hearing as well. (Hearing Tr., p. 23, line 5) (App. p. 59). His testimony largely outlined the basis of his chart as to the actual cost of attendance for H.L. at Iowa State University and the financial resources that were available to her to pay for said attendance. (Hearing Tr., p. 23, line 25 – p. 31, line 12) (Exhibit H) (App. pp. 36; 59-67). He noted that the numbers contained in section one of his chart outlined the actual costs of attendance for H.L. based upon her Ubill in Exhibit A. (Hearing Tr., p. 23, line 25 – p. 25, line 2) (Exhibits A and H) (App. pp. 21-22; 36; 59-61). He included book costs as well which he derived from H.L.'s Iowa State University Book Store receipt. (Hearing Tr., p. 25, lines 3-13) (Exhibits F and H) (App. p. 34-36; 61). He took this number which evidenced the total book cost for the first semester and doubled it to reflect the yearly cost. (Hearing Tr., p. 25, lines 3-13) (Exhibits F and H) (App. p. 34-36; 61). He went on to explain that section two of his chart outlined the scholarships and section three outlined the student loans available to H.L. (Hearing Tr., p. 25, line 14 – p. 28, line 3) (Exhibit H) (App. pp. 36; 61-64). He explained that according to Exhibit A, H.L.'s Ubill, and Exhibit C, H.L.'s financial award package, H.L. was eligible for yearly scholarships in the amount of \$6,025.00 and federal student loans in the amount of \$5,500.00 per year. (Hearing Tr., p. 25, line 14 – p. 28, line 3) (Exhibits



A, C, and H) (App. pp. 21-22; 25-29; 36; 61-64). After application of those to the actual costs of attendance, the balance remaining for H.L.'s cost of attendance was \$5,169.40. (Hearing Tr., p. 25, line 14 – p. 28, line 3) (Exhibits A, C, and H) (App. pp. 21-22; 25-29; 36; 61-64).

He went on to explain that section four of his chart outlined the financial resources available to H.L. as of the time of the hearing. (Hearing Tr., p. 28, line 4 – p. 29, line 24) (Exhibit H) (App. pp. 36; 64-65). He testified that Exhibit D was H.L.'s current bank statement which indicated she had \$2,119.11 in her account. (Hearing Tr., p. 28, line 4 – p. 29, line 24) (Exhibits D and H) (App. pp. 30; 36; 64-65). Additionally, he included in his chart the \$750.00 he agreed to pay in child support over the summer months after H.L. graduated from high school if she were to attend a college or university. (Hearing Tr., p. 28, line 4 – p. 29, line 24) (Exhibit H) (App. pp. 36; 64-65). With application of these financial resources, the balance remaining for H.L.'s cost of attendance was \$2,300.29 as indicated in section four of Exhibit H. (Hearing Tr., p. 28, line 4 – p. 29, line 24) (Exhibit H) (App. pp. 36; 64-65).

Next, Respondent outlined section five of his chart in Exhibit H. (Hearing Tr., p. 29, line 25 – p. 30, line 16) (Exhibit H) (App. pp. 36; 65-66). He estimated H.L. could earn \$10.00 per hour in employment at the rate of 10 hours a week during the school year and 40 hours a week during the summer. (Hearing Tr., p.

29, line 25 – p. 30, line 16) (Exhibit H) (App. pp. 36; 65-66). The anticipated net proceeds from that work were calculated to be \$6,000.00 on an annual basis. (Hearing Tr., p. 29, line 25 – p. 30, line 16) (Exhibit H) (App. p. 36; 65-66).

Once the \$6,000.00 in net earnings was applied to the remaining balance for the cost of attendance, Exhibit H indicates that H.L. actually ends up with a surplus of financial resources available to her in the amount of \$3,699.71. (Hearing Tr., p. 30, line 17 – p. 31, line 12) (Exhibit H) (App. pp. 36; 66-67). Therefore, he requested no subsidy by ordered paid by either parent. (Hearing Tr., p. 30, line 17 – p. 31, line 12) (Exhibit H) (App. pp. 36; 66-67).

Lastly, Respondent outlined a bit of the history which led to this dispute. (Hearing Tr., p. 31, line 13 – p. 33, line 7) (App. pp. 67-69). H.L. and he were estranged following the divorce and it was his feeling that H.L. had repudiated him as her father. (Hearing Tr., p. 31, line 13 – p. 33, line 7) (App. pp. 67-69). There was no communication between the two as of the time of this hearing. (Hearing Tr., p. 31, line 13 – p. 33, line 7) (App. pp. 67-69). However, due to an agreement in the parties' decree, Respondent could not assert the defense of repudiation as contained in Iowa Code § 598.21F(4). (Hearing Tr., p. 31, line 13 – p. 33, line 7) (App. pp. 67-69). Prior to the hearing on this matter, he had not been consulted in any way by H.L. or the Petitioner as it related to H.L.'s choice of college, finances, or college financial aid package. (Hearing Tr., p. 31, line 13 – p. 33, line 7) (App.



pp. 67-69). Additionally, within the last year, H.L. had purchased and financed a vehicle in her own name without his consent which indicated her financial ability to assume debt. (Hearing Tr., p. 31, line 13 – p. 33, line 7) (Exhibit E) (App. pp. 31-33; 67-69). He indicated clearly that it was his intention all along to have H.L. fund at least some of her college education expenses just as he had when he attended college. (Hearing Tr., p. 31, line 13 – p. 33, line 7) (App. pp. 67-69). He indicated this intention again on cross-examination. (Hearing Tr., p. 34, lines 11-20) (App. p. 70).

On September 13, 2016, the district court entered an Order regarding post-secondary education expenses in this matter. (Order) (App. pp. 104-107). The district court found that H.L.'s cost of attendance was \$19,099.40 per year. (Order) (App. pp. 104-107). Inclusive in those costs were sorority dues in the amount of \$1,119.00 and a cash allowance of \$600.00. (Order) (App. pp. 104-107). The remaining numbers appeared to have been derived from Exhibit B, the estimated cost of attendance sheet as opposed to Exhibit A, the actual Ubill, as the amounts listed mirror the amounts listed in Exhibit B. (Order) (Exhibits A and B) (App. pp. 21-24; 104-107). However, the district court made no such findings in its Order. (Order) (App. pp. 104-107).

The district court went on to note Respondent's resistance to the inclusion of sorority dues and cash allowance in the costs but cited *In re Marriage of Goodman*

and *In re Marriage of Vannausdoe* as authority for doing so. 690 N.W.2d 279 (Iowa 2004) and 668 N.W.2d 885, 889 (Iowa 2003). (Order) (App. pp. 104-107).

Lastly, the district court held that it would only apply the \$5,000.00 scholarship H.L. received toward the balance of the costs of attendance. (Order) (App. pp. 104-107). It held that she had no other funds to apply towards her education. (Order) (App. pp. 104-107). It found that the total remaining cost of attendance was therefore \$14,099.40 and calculated one-half of that for each party would total \$9,549.70. (Order) (App. pp. 104-107). The district court found that this amount exceeded the one-third cost allowed by Iowa Code § 598.21F and therefore assessed each party with the one-third cost of \$6,366.47. (Order) (App. pp. 104-107).

Following the Order of the district court, both sides filed Motions to Amend, Enlarge, and Modify the ruling pursuant to Iowa Rule of Civil Procedure 1.904. (Petitioner's Motion) (Respondent's Motion) (App. pp. 108-114). Petitioner pointed out calculation errors made by the district court in its ruling and asked that they be modified. (Petitioner's Motion) (App. pp. 108-109). Additionally, she requested the district court direct the parties as to when and how the payments should be made. (Petitioner's Motion) (App. pp. 108-109).

Respondent's Motion requested the district court reconsider its ruling to figure the costs based upon the Ubill in Exhibit B and not the estimated cost of

attendance sheet in Exhibit A. (Respondent's Motion) (Exhibits A and B) (App. pp. 21-24; 110-114). He further objected to the inclusion of sorority dues and a cash allowance and the district court's reliance upon *In re Goodman* as authority to do so. (Respondent's Motion) (App. pp. 110-114). Respondent was adamant that he specifically repudiated the idea that sorority participation was necessary for H.L.'s college experience and therefore *In re Goodman* did not apply to this case. (Respondent's Motion) (App. pp. 110-114). He argued the district court was in error not to include all of H.L.'s listed scholarships and available student loans. (Respondent's Motion) (App. pp. 110-114). Lastly, he objected to the district court failing to assess any costs to H.L. and requested the district court reconsider its ruling in that regard. (Respondent's Motion) (App. pp. 110-114).

The parties Motions were set for a hearing and a hearing commenced on said Motions on September 26, 2016. (Motion Tr., p. 1, lines 1-25) (App. p. 115). Both parties agreed the calculation and scrivener's errors contained in Petitioner's Motion should be corrected. (Motion Tr., p. 2, line 13 – p. 4, line 13) (App. pp. 116-118). Respondent then gave argument as to how the district court incorrectly calculated the costs of attendance in this matter. (Motion Tr., p. 5, line 19 – p. 6, line 13) (App. pp. 119-120). Respondent further argued the district court's inclusion of sorority dues and cash allowance were in error as Respondent had never agreed to these costs thus distinguishing his case from *In re Goodman*.



(Motion Tr., p. 6, line 9 – p. 10 line 18) (App. pp. 120-124). Additionally, Respondent argued that the district court was in error not to include H.L.’s full scholarship amounts and available federal student loans as required by Iowa Code 598.21F. (Motion Tr., p. 6, line 9 – p. 10 line 18) (App. pp. 120-124). Lastly, Respondent again requested the district court require H.L. to fund some of the costs of her education through her estimated work earnings. (Motion Tr., p. 10, line 24 – p. 11 line 16) (App. pp. 124-125). The Respondent requested the district court amend its ruling to follow the numbers and calculations provided by Exhibit H and find that neither party should provide any post-secondary education subsidy in this matter. (Motion Tr., p. 11, line 17 – p. 12, line 5) (App. pp. 125-126).

Following the hearing, the district court entered an amended Order. (Amended Order) (App. pp. 131-135). In its amended Order, the district court clarified its reliance on *In re Goodman*, 690 N.W.2d 279. (Amended Order) (App. pp. 131-135). It held that *Goodman* stands for the position that college is more than room, board, tuition, and books and therefore gave the district court discretion to include sorority dues over Respondent’s objection. (Amended Order) (App. pp. 131-135). It amended its Order to include some of the scholarship money not previously included and made corrections to its calculation and scrivener’s errors. (Amended Order) (App. pp. 131-135). It again denied Respondent’s request to include H.L.’s available federal student loans and all scholarships in its calculation

as well as his request to have H.L. contribute at least some money towards her education costs. (Amended Order) (App. pp. 131-135). Its amended Order calculated the total cost of attendance at \$19,889.20, subtracted the \$5,520.00 it considered scholarships, and concluded the unpaid amount to be \$14,363.20. (Amended Order) (App. pp. 133-134). It then determined that the one-half sum would be \$7,181.60 which exceeded the one-third amount contemplated by Iowa Code § 598.21F. (Amended Order) (App. p. 134). It therefore Ordered a college subsidy payment amount of \$6,629.73 for the 2016-2017 academic school year. (Amended Order) (App. p. 134). Respondent filed a Notice of Appeal on October 19, 2016. (Notice of Appeal) (App. pp. 136-137).

The district court made numerous errors in its calculation and assessment of post-secondary education costs pursuant to Iowa Code § 598F. For the following reasons this Court should overturn the ruling of the district court and grant Respondent relief as requested.

**Routing Statement:** This case should be transferred to the Court of Appeals because no basis exists for the Supreme Court to retain this case for review. Iowa R. App. P. 6.1101. Transferring this case to the court of appeals is warranted because it involves questions that can be resolved by applying existing legal principles. R. 6.1101(3)(a).



## ARGUMENT

### I. THE DISTRICT COURT ERRED IN ITS CALCULATION OF THE COST OF ATTENDANCE

**Preservation of Error:** Respondent raises the issue of error in calculation of post-secondary education expenses. This issue was tried in the district court and was properly preserved for review on appeal. *See In re Marriage of Okonkwo*, 525 N.W.2d 870, 872 (Iowa Ct. App. 1994) (holding that an issue not presented to the trial court will not be considered for the first time on appeal).

**Standard of Review:** Dissolutions of marriage are tried in equity and appellate review is de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). The Appellate Court must give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but is not bound by them. *In re Marriage of Fynaardt*, 545 N.W.2d 890, 892 (Iowa App. 1996).

**Discussion:** Iowa Code § 598.21F authorizes the Court to Order divorced parents to subsidize the costs of their child's post-secondary education for good cause shown. Iowa Code § 598.21F(1). "In determining whether good cause exists, the court must consider the age and ability of the child, the child's financial resources, whether the child is self-sustaining, and the financial situation of the parents." *In re Goodman*, 690 N.W.2d at 282-283 (citing *In re Marriage of Williams*, 595 N.W.2d 126, 130 (Iowa 1999)). The amount paid by each parent shall not exceed one-third of the total cost of the post-secondary education. Iowa

Code § 598.21F(2)(c). This Court has previously held that the reasonable costs of attending college include more than just tuition, books, room, board, and supplies. *In re Marriage of Vannausdle*, 668 N.W.2d at 889. However, as it relates to sorority dues, it has been held that those will be considered only in unique circumstances like the one presented in *Goodman* where the parties initially agreed to split those sorority due costs. *In re Goodman*, 690 N.W.2d at 284.

**a. The District Court Incorrectly Calculated the Actual Costs**

Respondent offered Exhibits A and B for the district court's consideration in this matter. (Exhibits A and B) (App. pp. 21-24). As outlined above, by Petitioner's own admission, the costs of attendance outlined in Exhibit A, the Ubill, were actually lower than the estimated cost of attendance outlined by Exhibit B. (Hearing Tr., p. 16, line 7 – p. 20, line 10) (Exhibits A and B) (App. pp. 21-24; 52-56). As a result, Roger compiled Exhibit H and urged the district court calculate the costs of attendance pursuant to Exhibit A as he had in section one of his chart. (Hearing Tr., p. 23, line 25 – p. 25, line 2) (Exhibits A and H) (App. pp. 21-22; 36; 59-61). His chart also included the actual book costs as well which he derived from H.L.'s Iowa State University Book Store receipt as opposed to the estimate contained in Exhibit B. (Hearing Tr., p. 25, lines 3-13) (Exhibits B, F and H) (App. pp. 23-24; 34-35; 61). The difference between these numbers can be found by comparing the district court's amended Order with Respondent's Exhibit

H. (Amended Order) (Exhibit H) (App. pp. 36; 131-135). The Amended Order largely adopted Respondent's request that it apply the actual costs vs. the estimated costs. (Amended Order) (App. pp. 131-135). However, the district court still appears to miscalculate the fees portion by double counting some fees that were listed as one time fees in Exhibit A. (Amended Order) (Exhibit A) (App. pp. 21-22; 131-135). The result is an estimated cost in the Amended Order, minus the sorority dues and cash allowance, of \$17,369.20 versus \$16,694.40 for section one of Exhibit H. (Amended Order) (Exhibit H) (App. pp. 36; 131-135). As Exhibit H correctly outlines each individual fee and is correctly calculated, Respondent requests this Court amend the district court's Order to reflect the appropriate cost of attendance at \$16,694.40.

**b. The District Court Incorrectly Included Sorority Dues and a Cash Allowance.**

As noted above, *In re Goodman* stands for the notion that sorority dues and cash allowances will only be allowed in cases that fit the unique circumstances of *Goodman*. *In re Goodman*, 690 N.W.2d at 284. In *Goodman*, the parties had previously agreed to give their child a cash allowance prior to their divorce decree being entered. *Id.* Additionally, they had agreed to split the costs of sorority dues when she attended college and indicated that participation in sorority life, in their view, was necessary for her college experience. *Id.* There are no such agreements in this case. Respondent was adamant that he disagreed with paying the costs of



sorority membership and he was firm that he did not agree to pay H.L. and allowance. Furthermore, no evidence or testimony was ever admitted indicating H.L. had an allowance similar to the Goodman child prior to the entry of the dissolution decree in this matter. In short, the district court applied *In re Goodman* too broadly and, as a result, misapplied its holding to this case. This case is distinguishable from the narrow facts considered in *Goodman* and therefore the district court's inclusion of sorority dues and cash allowance in the total cost of attendance calculation was in error. Those amounts should be subtracted from the total and this Court should amend the district court's Order to find that the total cost of attendance for H.L. at Iowa State University is \$16,694.40.

## **II. THE DISTRICT COURT ERRORED IN NOT ASSESSING COST TO THE CHILD**

**Preservation of Error:** Respondent raises the issue of error in assessment of costs for post-secondary education expenses. This issue was tried in the district court and was properly preserved for review on appeal. See *In re Marriage of Okonkwo*, 525 N.W.2d at 872 (holding that an issue not presented to the trial court will not be considered for the first time on appeal).

**Standard of Review:** Dissolutions of marriage are tried in equity and appellate review is de novo. *In re Marriage of Sullins*, 715 N.W.2d at 247. The Appellate Court must give weight to the fact findings of the trial court, especially

when considering the credibility of witnesses, but is not bound by them. *In re Marriage of Fynaardt*, 545 N.W.2d 890, 892 (Iowa App. 1996).

**Discussion:** After the cost component is determined, the court must determine the amount the child can reasonably contribute to the payment of costs given the child's financial resources. *In re Vannausdle*, 668 N.W.2d at 888 (see also Iowa Code § 598.21F(2)(b)). In calculating the child's contribution, the Court should consider "the child's financial resources, including but not limited to the availability of financial aid whether in the form of scholarships, grants, or student loans, and the ability of the child to earn income while attending school." Iowa Code § 598F.21(2)(b). The child's expected contribution is then subtracted from the cost calculation to determine the parent's obligation. *In re Vannausdle*, 668 N.W.2d at 888 (see also Iowa Code § 598.21F(2)(c). Each parent's amount cannot exceed one-third the cost of the total amount. *Id.*

**a. The District Court Failed to Include the Child's Student Loan**

*In re Vannausdle* did not include student loans in the calculation of the child's contribution. 668 N.W.2d at 889-890. However, this was due to the fact that neither party asked it to be considered in the calculation when it was determined at the district court level. *Id.* That is very different than the facts of this case and clearly distinguishable. In this case, Respondent specifically requested it be considered in the calculation. (Hearing Tr., p. 25, line 14 – p. 28,



line 3) (Exhibits A, C, and H) (App. pp. 61-64; 21-23; 36). He included documentation of its availability and amount, included it in his calculation chart, and testified that he wanted it to be considered. (Hearing Tr., p. 25, line 14 – p. 28, line 3) (Exhibits A, C, and H) (App. pp. 21-22; 25-29; 36; 61-64). The total amount of student loan available to H.L. was \$5,500.00 in unsubsidized federal loans. (Hearing Tr., p. 25, line 14 – p. 28, line 3) (Exhibits A, C, and H) (App. pp. 21-22; 25-29; 36; 61-64). Pursuant to Iowa Code § 598.21F(2)(b), this amount should have been applied to the total before any assessment was made of the parents portion of payment. *In re Vannausdle*, 668 N.W.2d at 888 and Iowa Code § 598.21F(2)(c). The district court failed to do so. Respondent requests this Court amend the district court's Order to subtract the \$5,500.00 loan amount from the total cost of attendance.

**b. The District Court Failed to Include the Child's Scholarships**

The child received a Dollars for Scholars scholarship in the amount of \$525.00 annually and an unidentified scholarship in the amount of \$500.00 annually. (See Exhibits A, C, and H) (App. pp. 21-22; 25-29; 36). These amounts were not calculated by the district court as contributions from the child as required by Iowa Code §598.21F(2)(b). This failure was in error and should have been applied before determining the parent's contribution amounts. *In re Vannausdle*, 668 N.W.2d at 888 and Iowa Code § 598.21F(2)(c). Respondent requests this

Court amend the district court's Order to subtract the \$1,025.00 in scholarship money H.L. received on her Ubill from the total cost of attendance. (See Exhibits A, B, and H).

**c. The District Court Failed to Include the Child's Ability to Earn Wage and Other Financial Resources**

Iowa Code § 598.21F(2)(b) includes in its calculation of the child's contribution the child's financial resources including the child's ability to earn income while attending school. Respondent requested the district court apply and consider H.L.'s cash on hand and her reasonable ability to work while enrolled in school in its calculation. (Hearing Tr., p. 28, line 4 – p. 30, line 16) (Exhibit H) (App. pp. 36; 64-66). He noted that H.L.'s bank account showed a balance of \$2,119.11 at the time of the hearing and that he had paid an additional \$750.00 past her date of graduation in the amount of child support to help aid and assist in her finances. (Hearing Tr., p. 28, line 4 – p. 30, line 16) (Exhibits D and H) (App. pp. 30; 36; 64-66). He also noted that she could work a reasonable 10 hours a week while attending school and full time in the summer at a rate of \$10.00 per hour. (Hearing Tr., p. 28, line 4 – p. 30, line 16) (Exhibit H) (App. pp. 36; 64-66). He requested the district court add these amounts to the child's expected contribution amount pursuant to Iowa Code § 598.21F(2)(b). This request was not unreasonable given that, pursuant to the calculations in Exhibit H which show surplus revenue of \$3,699.71 for the academic year, H.L. would end the school

year with more money in her bank account than when she started. (Exhibit H) (App. p. 36). The district court failed to grant Respondent's request and held that the child bore no responsibility for payment for her education of any kind. (Amended Order) (App. pp. 131-135). This was contrary to Respondent's repeated desire for his daughter to have some personal financial responsibility for payment of her own education. (Hearing Tr., p. 31, line 13 – p. 33, line 7 and p. 34, lines 11-20) (App. pp. 67; 70). The failure of the district court to apportion the child any financial responsibility was in error. This Court should amend the district court's Order and require the child to bore some financial responsibility for her education as requested by the Respondent.

### **III. TOTAL CALCULATION OF SUBSIDY**

With application of the above stated amendments, this Court should find as follows:

Total cost of Attendance	\$16,694.40
Grants and Scholarships	-\$6,025.00
Loans	-\$5,500.00
Student Financial Resources	-\$2,869.11
Earned Income – Student	-\$6,000.00
TOTAL BALANCE	-\$3,699.71
<b>PARENTAL CONTRIBUTION</b>	<b>\$0</b>



### **CONCLUSION**

For the reasons stated above, this Court should modify the district court Order regarding post-secondary education subsidy as outlined above.

### **NOTICE OF ORAL ARGUMENT**

Notice is hereby given that upon submission of the cause to the Supreme Court of Iowa, Appellant hereby requests to be heard in oral argument.

E. C.

### **ATTORNEY'S COST CERTIFICATE**

I hereby certify that the cost of printing the foregoing Appellant's Brief and Argument was the sum of \$ 5<sup>00</sup>.

E. C.


**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE  
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